

# IRL

**INSURANCE RESEARCH LETTER** | March 2017 • ISSN #2165-2740 • Vol. 20 No. 3 • [irletter.com](http://irletter.com)



## US AND EU REACH A COVERED AGREEMENT ON CROSS-BORDER INSURANCE AND REINSURANCE

*The Agreement will enter into force seven days after the date the United States and EU exchange written notifications certifying that they have completed their respective internal requirements and procedures.*

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**Have an international question?**

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**INSURANCE RESEARCH LETTER**  
ISSN #0892-0540 • Vol. 51 No. 3  
ISSN #2165-2740 • Vol. 20 No. 3  
(digital)

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## EDITOR'S LETTER

### Makes you wonder

*Why is the CGL, the grand master of all policies, being shunted?*

The Cyber conversation has been going on for *a number of years*. News of data breaches, hacking and phishing are as common as the rising sun. Insurers, brokers, risk managers and lawyers are now heavily invested in cyber liability matters. Everyone is scrambling to contain the risk. Insurers are adding policy exclusions and some, not all, carriers are offering standalone cyber liability policies.

Quoting one of this month's contributors "The continued expansion of loss causes, courtesy of new technology, will have implications for both legacy insurance and new cyber insurance contracts" opens things up to some new thinking. Being mostly a contrarian I wonder if this entire hubbub isn't overdone – why new policies at all. Why not just cover cyber liability under the General Liability Policy?

As insurers paste exclusions on existing policies and add exclusionary wordings in new ones, whether needed or not, they might consider providing coverage under the CGL and let claims be adjudicated thereunder. Companies wouldn't be exposed to unnecessary time and expense liabilities. Surely all that is needed is evaluating, underwriting and pricing the risk correctly.

For as long as I have been in the business people have been trying to create new types of policies to cover pre-existing exposures. Take business interruption insurance – this is what it is but years ago someone decided to call it 'time element' insurance. To what end? For what purpose? It didn't take long but this 'new' coverage went the way of the dodo bird and business interruption insurance prevailed.

Could it be as simple as a 'new' policy is just a growth hormone for sales?

### "Irish insurers concerned about rising claim costs, falling profits, Brexit"\*

I was startled by this headline. Ireland has been the 'backroom' for a number of insurers, US and others, for years because

of its well-educated talent pool, English language fluency, and overall stability. The Irish brokerage business has always been competitive and creative. A few Lloyd's and other specialty insurers have also domiciled in the Emerald Isle.

And Irish captives cannot be overlooked. "With over 140 active captives Dublin is an established European domicile that caters for both reinsurance and direct writing captives. 47 of the captives are direct writers utilizing the European Union (EU) Freedom of Services directives to cover risks in all EU countries from a single location. Major corporates with captives in Dublin include BMW, Ericsson, Hewlett Packard, McDonald's, Seagrams, Coca-Cola, Volvo, H.J. Heinz and Rand Merchant Bank". \*\*

US Dollar insurance is available; the Euro is the coin of the realm and is freely exchanged and exportable. The only consequential class of business that is reserved for the Irish Government is workers' compensation and who wants that anyway. Government levies on non-life premiums are low and in line with common practice in developed countries. There's nothing odd going on. It's a great place to do business.

I believe Irish insurance CEOs are playing up the challenges to keep others away from their wonderful patch of green (cash). Brexit is going to be great for Ireland and Ireland for the insurance industry.

\* Business Insurance Feb 13, 2017

\*\* [Captive.com](#) [Ireland-specific link with more info]

### Trouble, trouble and triple trouble

The just published PwC 20th Insurance CEO survey (download details in **Recently Published** section, below) reported an astonishing and disturbing fact – "74% of insurance CEOs – more than those in any other industry PwC surveyed – see lack of trust in the business as a threat to growth, reflecting the importance of trust to the insurance 'promise'." A lack of trust! Yikes, the entire premise of the insurance business – the promise to pay – is at risk if this

finding is correct.

I don't know how the question was framed but the response just seems all upside down. There are two ways of looking at this. I took this to mean that CEOs were sensing a lack of trust and therefore a threat to growth. The other way to consider this is that the question was posed naïvely and the CEOs were obligated to respond.

If findings like this are surfacing then the industry must promote that policyholders always come first and drive this point home to consumers of all stripes. Industry trade groups will continue their lobbying ways with regulators and elected representatives, but would be well advised to form an industry-wide Church-like mantra with broad appeal spelling out the virtues of insurance. Granted all claims won't be paid but then you don't always get what you prayed for.

#### Insurance Research Letter archives

One of the best ways to bone up on your insurance history is to access past issues on Vertafore's ReferenceConnect [portal](#). ReferenceConnect is the insurance industry's most comprehensive, online content platform, with publications from 40+ top publishers centralized in one location. RefCon has every Edition of the Insurance Research Letter, every word, news item and country-specific expert-written article from 2000 to today. Each prior Edition is sorted by topic:

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- Agent/Broker/Consultant/Risk Manager (news & people)
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- Global Briefs
- Risk Management Spotlight (RM interviews)
- This Month in History (highlights from years gone by)
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- Special Reports

For a fair price we can provide archived issues of the Insurance Research Letter all the way back to 1966.

#### HIGHLIGHTS: ESSENTIAL RISK MANAGEMENT ARTICLES

##### US and EU Reach a Covered Agreement on Cross-Border Insurance and Reinsurance

On January 13, 2017, the US Department of the Treasury (Treasury), the Office of the US Trade Representative (USTR) and the European Commission announced that they had reached a covered agreement (Agreement) regarding international insurance groups doing business in the United States and the European Union (EU), concluding negotiations that officially began in November 2015. Read what this US and EU covered agreement on cross-border insurance means on [page 19](#)

##### Navigating a Challenged Global Order

What has made operating with higher risk in all parts of the world business as usual is a breakdown of the norms that have held since the end of World War II. These norms and values have always been violated. But there has often been a price to pay for it, which deterred others from breaking them and maintained a global system that has lifted hundreds of millions out of poverty. In the past 15 or so years, the challenges to these norms have become so widespread that the global system itself is under threat. Find out what are the norms of globalization under most consistent challenge on [page 22](#)

#### QUIZZICAL

(hint: keyed off content)

1. What is the average cost of the largest cyber security incident experienced for very large US companies?
  - a. \$35,000
  - b. \$102,000
  - c. \$1,000,000
2. How many risks have now been bound on the London market's electronic trading platform, Placing Platform Limited (PPL)?
  - a. 250
  - b. 900
  - c. 1,600
  - d. 3,000
3. In our Looking Back section from March 1999 – how much did the insurance industry in the US estimate its costs for Y2K fixes to be?
  - a. \$350 million
  - b. \$1.45 billion
  - c. \$6.58 billion

[See The Back Page for the answers](#)

**Please see EDITOR'S LETTER on Page 30**

# Contributors



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Smita has been with Clements Worldwide since 2006. She began her insurance career in India in 1996 as a broker (Insurance and Reinsurance) and has worked in various insurance markets, forging strong relationships with underwriters and insurance providers in India, the U.K., U.A.E., Asia and the U.S. Bhargava speaks frequently at conferences, forums, and to the press on managing risk through insurance products in high-risk countries including Iraq, Afghanistan, Pakistan, and Yemen. Her analysis has been featured in Reuters, CBS MONEYWATCH, The Guardian, Globe & Mail, Daily Finance, and other outlets.



**James Evans – Managing Director in BDO Consulting’s Insurance Advisory Practice**

*Urgent Need Arises on ‘Silent’ Cyber Risks*  
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James leads the Insurance Advisory practice with more than 20 years of experience in Property & Casualty insurance, portfolio management, and international reinsurance. James focuses on predictive analytics and actuarial services that leverage data analytics and visualization to provide comprehensive risk, insurance operation transformations, and capital management services to clients.

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*Urgent Need Arises on ‘Silent’ Cyber Risks*  
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Judy is a Managing Director in BDO Consulting’s Technology Advisory Services practice, having more than 20 years of experience in insurance and technology. Known as “one of the premier voices in legal technology” by Legaltech News, she consults with clients on cyber insurance, cybersecurity, information governance, data privacy and complex insurance matters. She advises clients on best practices for handling information throughout its life cycle, from creation or collection through disposition. In addition, Judy works with organizations and their counsel to advise on data privacy and cyber insurance issues, having depth of experience in coverage adequacy evaluation, international arbitration and all phases of insurance coverage litigation.

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*What will President Trump want to change in the insurance world?*  
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George has been involved in the international insurance industry for more than 35 years. Having worked with Commercial Union (now Aviva), Delta Lloyd, Bekouw Mendes and Alexander & Alexander (now Aon), The St Paul Companies (now Travelers) and WBN. He is a regular contributor to the *Insurance Research Letter*. George has been advising individuals and firms around the world and facilitating global business strategies and international business development. This involves intensive contacts with retail, wholesale and reinsurance brokers and agencies, access to training, skills and expertise in handling insurance and risk management projects in many countries. George was closely involved with structuring networks such as Brokers Link, has completed projects with Assurex, HLA (now Wells Fargo), UNiBA, UNISONBrokers and WING, to name a few.

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*US and EU Reach a Covered Agreement on Cross-Border Insurance and Reinsurance*  
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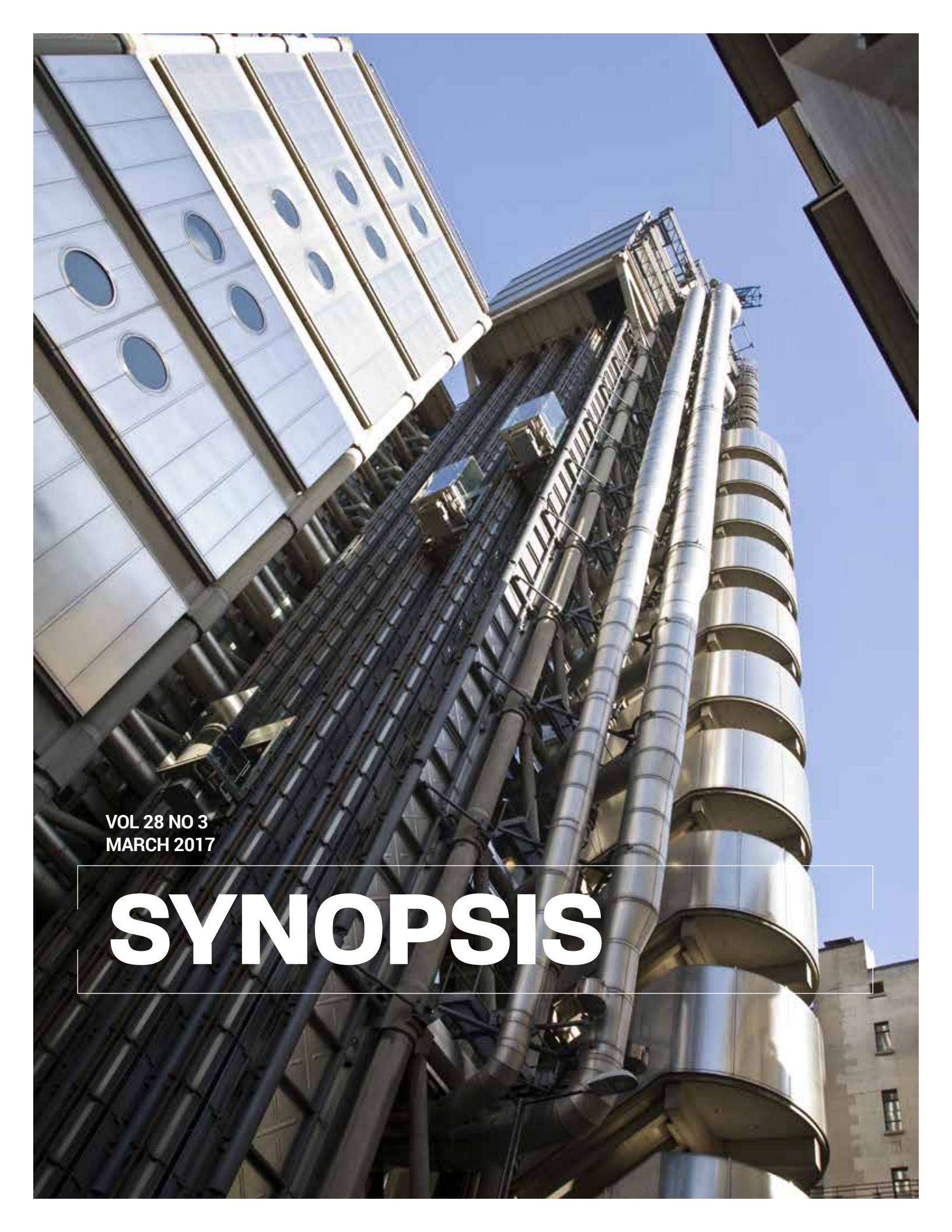
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~ **Robert Hartwig**, Clinical Associate Professor & Co-Director, Center for Risk and Uncertainty Management at University of South Carolina & Former President and Economist, The Insurance Information Institute ([I.I.I.](#))





VOL 28 NO 3  
MARCH 2017

# SYNOPSIS



PHOTO  
LONDON, UK  
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It seems that a form of musical chairs has been going on in the hallowed halls of Lloyd's when it comes to **who will be nominated to take over from John Nelson.**

## COMPANIES • NEWSBRIEFS

### Argo completes Ariel Re deal

Argo has closed its acquisition of Lloyd's Ariel Re. In November 2016, Argo told the Insurance Insider that it was going to buy 100 percent of Ariel for cash of approximately \$235 million, valuing the business at 1.25x forecast year-end tangible book value. Banco BTG Pactual and the Abu Dhabi Investment Council jointly owned Ariel Re. As part of the new business structure, Argo is hiring **Ryan Mather** the former Ariel Re CEO as global head of reinsurance for the combined group. The Ariel Re brand will be retained as a member of the international Argo Group. Mather will report directly to the head of Argo Group's international business, **Jose A. Hernandez**.

### Beazley to establish European subsidiary in Ireland

**Andrew Horton**, CEO of U.K.-based insurance underwriter Beazley P.L.C., said that the company plans to establish a European subsidiary in Dublin, Ireland, following the Brexit vote. The Irish Times reported citing Reuters. "We're expecting to add jobs in Dublin because it will need more people to manage a live insurer than a reinsurer," Mr. Horton said.

### Lloyd's puts the kibosh on booze during working hours

Lloyd's has imposed a ban on its employees drinking alcohol during the working day, according to the *Financial Times* – a move it says will bring Lloyd's in line with the rest of the City and is not a response to alcohol-related problems; *but according to Lloyd's itself "around half of all disciplinary cases in the past two years were*

*related to alcohol."* According to the paper, the ban will affect Lloyd's staff (800 strong) only, and **not the insurance brokers and underwriters** who work in the market. The paper reports that many have expressed frustration about the move, especially as much of the business done by Lloyd's relies on face-to-face contact and relationships that are often forged in pubs or bars around Leadenhall Market, where Lloyd's is based.

### Poland's PZU seeking M&A opportunities with foreign insurers

**Mateusz Morawiecki**, Poland's deputy prime minister and minister of economic development and finance, has said that insurer Powszechny Zaklad Ubezpieczen ([PZU](#)) is seeking merger and acquisition opportunities with foreign insurers, *xprimm.com* reports citing media sources. PZU aims to increase its revenue from non-Polish business to 20 percent by 2020 and hold more than 100 billion Polish zlotys (\$25 billion) in assets under management.

**Note:** PZU is the largest player in the Central Eastern Europe (CEE) region

## PEOPLE

### In Memoriam: John R. Cox, Founding Chairman of ACE Limited

John R. Cox, the founding Chairman and first employee of ACE Limited, which was established in 1985 and last year acquired The Chubb Corporation, adopting its name. Mr. Cox, a giant in the property and casualty insurance industry, was 84. In the mid-1980s, Mr. Cox was among a handful of forward-thinking pioneers who helped create a new insurance company to respond to an availability crisis in

the U.S. insurance marketplace for excess liability and directors and officers insurance coverage. The founding sponsors of ACE were 34 blue-chip companies from a broad range of industries. Mr. Cox played a critical role in forming this consortium. By the *time* ACE was founded in 1985, Mr. Cox was already a recognized industry leader. He began his career in the insurance industry in 1959 as an accounting clerk at American International Group, where his career flourished. He later joined the Insurance Company of North America, becoming President and, in 1981, Senior Executive Vice President and Chief Operating Officer of the insurer's parent company, INA Corporation. When INA merged with the Connecticut General Life Insurance Company to form Cigna, Mr. Cox was Executive Vice President for its P&C insurance operations. Mr. Cox left Cigna in 1983 and served for a time as Deputy Chairman and Chief Executive Officer of Associated Madison Companies, a financial services group owned by the American Can Company. He retired from ACE in 1990. Mr. Cox grew up in Boston, Mass. and Newburgh, N.Y. He served in the Marine Corps in the Korean War and, following his military service, graduated from New York University and attended NYU's Graduate School of Business Administration.

#### **Former AIG Chief Hank Greenberg Settles Civil Fraud Case**

Former AIG boss **Maurice "Hank" Greenberg** and former chief financial officer **Howard Smith** have agreed to pay a combined \$9.9 million to settle a 12-year-old lawsuit in which the state of New York accused the two executives of engineering two sham transactions designed to artificially boost AIG's reserves. Under the settlement, Greenberg

and Smith admitted to initiating, participating in and approving the two deals (with General Re and Capco Reinsurance) but not to committing any fraud. The \$9 million payment by Greenberg and \$900,000 payment by Smith represent disgorgement of performance bonuses they received between 2001 and 2004. The state had sought up to \$6 billion in damages on behalf of AIG shareholders but dropped that demand after Greenberg and others agreed to a \$115 million class-action settlement with shareholders in 2013. New York Attorney General **Eric Schneiderman** had also sought to bar Greenberg and Smith from the securities industry and serving as directors or officers of publicly traded companies, but those penalties were not included in the final settlement. The NY AG claims fraud but Messrs. Greenberg and Smith dispute this claim – [read more](#) about *the their* midtown Manhattan press conference. **Anthony Sabino**, a law professor at St. John's University's Peter J. Tobin College of Business asks "Why did the state of New York spend over a decade pursuing Greenberg when the injuries had already been fully addressed?" Political vengeance is my guess.

#### **Former Aon UK Chairman to be nominated Lloyd's Chairman**

It seems that a form of musical chairs has been going on in the hallowed halls of Lloyd's when it comes to who will be nominated to take over from John Nelson. First it was reported by Sky News that Former UK trade minister **Evan Mervyn Davies, Baron Davies of Abersoch (aka Lord Davies)** and XL Catlin deputy executive chairman **Stephen Catlin** were on the shortlist for the Lloyd's chairmanship. Now as we get ready to publish it is reported by the Financial Times that **Bruce Carnegie-Brown**, former Aon UK

chairman and former president and CEO of Marsh Europe will be nominated to succeed **John Nelson**. Nelson has served as chairman of the London market since 2011, and is due to step down later this year. The Council of Lloyd's will meet soon to approve Carnegie-Brown's appointment to lead the 300-year-old institution.

#### **ISN**



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Editors John Salisbury and John Foehl have more than **50 years of combined expertise** in the captive arena.

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# ABCRM REVIEW

## AGENTS, BROKERS, CONSULTANTS & RISK MANAGERS

### ABCRM NEWS • COMPANIES

#### **Aon sells Hewitt to Blackstone for \$4.3bn with a possible \$500mn kicker**

Aon announced on February 10 that it has signed a definitive agreement to sell its benefits administration and HR Business *process* Outsourcing (BPO) platform to Blackstone for \$4.3 billion cash at closing and additional consideration of up to \$500 million based on future performance. Total after-tax cash proceeds are expected to be approximately \$3.0 billion. The transaction is subject to customary closing conditions, including receipt of specified antitrust clearances, and is expected to close by the end of the second quarter of 2017.

**Note:** Aon bought Hewitt in 2010 for \$4.9 billion.

### PEOPLE

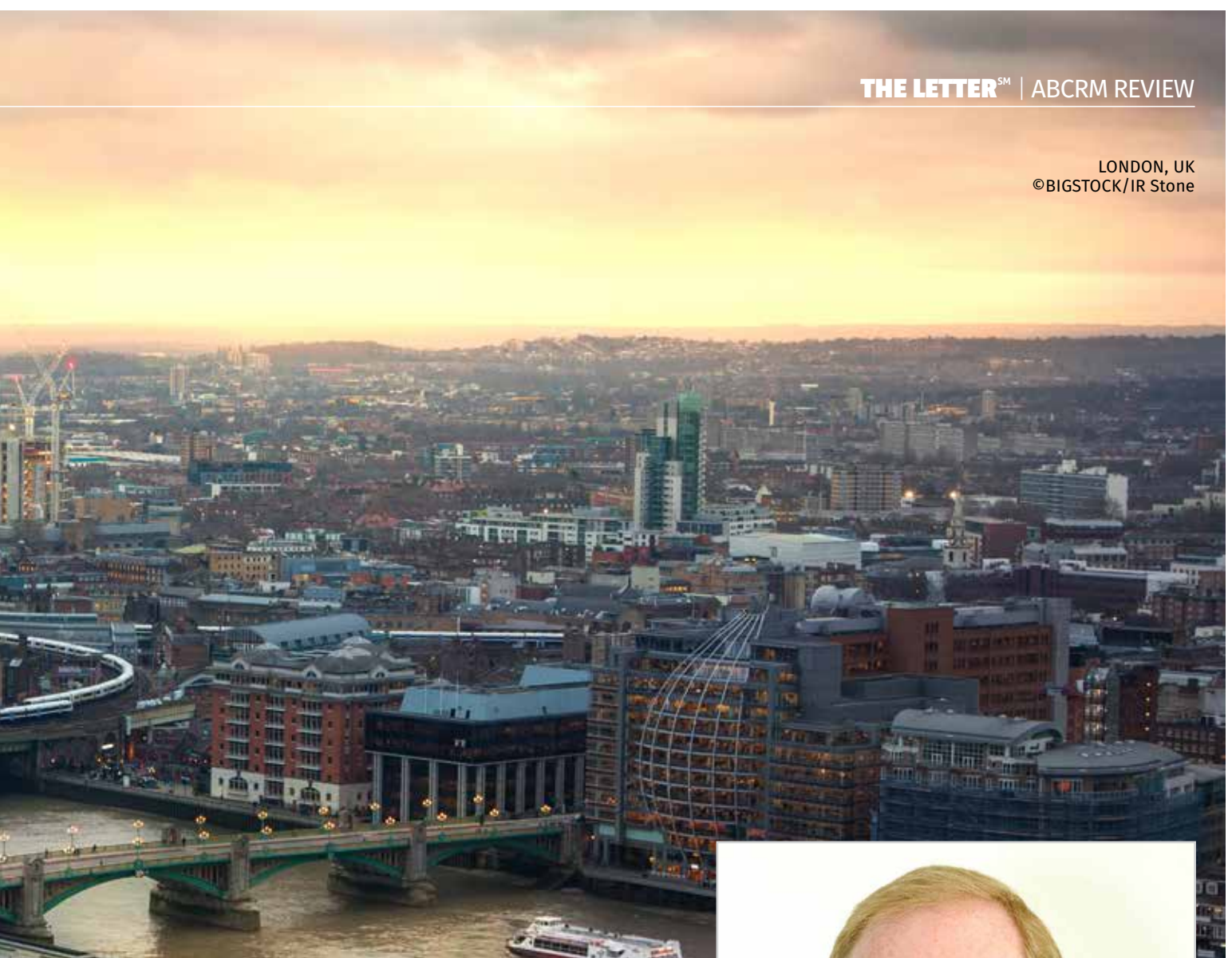
#### **Airmic CEO stepping down**

The Association of Insurance and Risk Managers ([Airmic](#))

has announced that **John Hurrell** will step down as CEO of the trade body. Hurrell will quit his position after serving for nine years at the helm. To ensure a smooth transition, he will remain in the post until his successor is in place. Hurrell became CEO in January 2008 following a career of almost 30 years in the Marsh and McLennan Group of Companies.

#### **Ed appoints marine, energy reinsurance head from Willis Re**

[Ed](#), the wholesale and reinsurance broker previously known as Cooper Gay, has appointed **Andy Wakefield** as Managing Director – Marine and Energy Reinsurance. He joins from Willis Re where he served most recently as an Executive Director, where he focused on European and London market business. **Kieran Angelini-Hurll**, CEO of Reinsurance at Ed said, "This market is primed for a reinsurance broker with global reach which does not compete with its clients. The opportunities for significant and rapid expansion in this sector are clear."



Note: As I have previously written, the Ed website is fun – especially the female computer generated voice over “[Hello I’m Ed](#)” explaining what Ed is.

#### **IAIS Names Successor to Secretary General Yoshihiro Kawai**

**Jonathan Dixon** to lead the global standard-setting body following the [IAIS](#) Annual Conference in November 2017. Since 2008, Dixon has served as Deputy Executive Officer of the Financial Services Board of South Africa, with oversight of insurance regulation and supervision.

**ISN**



**Airmic CEO John Hurrell**



**UNITED NATIONS**

NEW YORK CITY -  
Flags in front of  
The United Nations  
Building, home of  
the security council  
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*Understanding local insurance requirements including compulsory coverages, legislation, supervision, non-admitted insurance, principal coverages, product information, etc. is critical to assure legal compliance and avoidance of fines, penalties and the very real possibility of considerable legal costs.*

~ **Alexander B. Hodges**, Editor  
*Insurance Research Letter*

Alex has 40 years of experience in the industry and was an accomplished frontrunner in international P&C circles for several decades. Mr. Hodges began his career with Rollins Burdick Hunter Co in Chicago; moved to New York with the firm; then back to Chicago HQ after the acquisition of RBH by Aon. As part of Aon's global acquisition team, Mr. Hodges moved to The Netherlands to help with the integration of Hudig-Langeveldt and Frank B. Hall in Europe, Scandinavia, United Kingdom and the Middle East. Mr. Hodges has expertise managing large multinational insurance programs. His last position with Aon was managing the Aon-owned Strategic Underwriters International MGA for Kidnap, Ransom & Extortion, Workplace Violence and Political Risk. Mr. Hodges is the founder of Insurance Services Network Corporation and Editor of the *Insurance Research Letter*.

Follow him on Twitter [@isninsurance](#)

## GLOBAL BRIEFS

### China – Premium growth up more than 25% in 2016 but growth to slow in 2017

The China Insurance Regulatory Commission (CIRC) reports that total premium income grew 27.5 percent year on year to 3.1 trillion Chinese yuan (\$450 billion) in 2016. Profit dropped by about 30 percent to CNY 200 billion, due to low interest rates and capital market volatility. Premium income is expected to grow at a slower pace in 2017 due to tighter regulations, an official said. Insurers' investment income yield was at 5.66 percent last year. That compared with an average investment income yield of 7.56 percent in 2015.

### Nepal – Nepal to create world's highest free Wi-Fi service at Everest base camp

Nepal will create free Wi-Fi zones at the base camp of Mount Everest to facilitate communications from the world's highest mountain and to aid rescue efforts in the event of any contingencies the *Hindustan Times* reported. This probably will not affect premium rates for expeditions in any way.

### Panama – 2016 premium volume flat

Data from Panama's insurance and reinsurance regulator showed that insurance premium volume remained almost flat year over year at \$1.4 billion in 2016, while the number of issued policies grew by nearly 14 percent to \$1.4 million, *BNamericas* reported citing *ANPanama*.

### United Kingdom – London placing platform passes 1,600 mark

*Insurance Day* reports: More than 1,600 risks have now been bound on the London market's electronic trading platform, Placing Platform Limited (PPL), with 75 companies now signed up to the platform. Figures, released by the London Market Group, show 2,762 endorsements have been made on the platform, with placements rising steadily from month on month. The platform launched last year with open market terrorism followed by directors' and officers', financial institutions and professional indemnity classes in November. An estimated 66 percent of open market financial and professional lines risks placed by brokers using the platform are now being written on the platform, according to PPL. It said that discussions were continuing with the marine market to bring them onto the platform.

### United Kingdom – “The cost of insurance for a new, young driver is often eye-watering” One in two drivers think illegal insurance ‘fronting’ is acceptable

A February 7, 2017 article on yourmoney.com reported that a study of some 24,000 drivers found that 49 percent use ‘fronting’ to cut premiums. Fronting is where a named driver on a policy, rather than the main driver, is the person driving the car most or all of the time. According to the latest AA British Insurance Premium Index, the typical quoted premium for someone aged 17-22 is £1,436, more than double that for someone aged 30-35.

**Please see GLOBAL BRIEFS on Page 30**

# LOOKING BACK

*Significant news from the pages of the Insurance Research Letter*

## MARCH 1999

**XL Capital** has agreed to buy US reinsurer **NAC Re** in a stock deal valued at more than \$1 billion.

**Reliance** launched a new product – International Business Package (IBP) intended for US-based companies expanding overseas. Coverages include: personal property, business income, crime, inland marine, general liability, product liability, non-owned auto, workers' compensation and kidnap & ransom.

**Marsh & McLennan** reported revenue for the year 1998 of \$7.2 billion.

Note: For the year 2015, consolidated revenue was \$12.9 billion

**Risk & Insurance Magazine** named **AonLine** to its all-star roster of tools dubbed "Standouts for Solutions" for 1998. Aon established AonLine as a subscription-based analytical and research tool for its high-end risk management customers.

**Aon** has entered into an agreement to buy Spanish broker **Gil y Carvajal Group**.

**Russia** – The Lower House of Parliament has approved legislation aimed at limiting foreign ownership of domestic insurance companies. The law, subject to some parliamentary gymnastics, requires the government to withdraw the operating license of any insurer with more than 12 percent foreign investment. This, however, doesn't apply to **AIG** or **Allianz** because they were established before there were any limits legislated.

**U.S.** – The insurance industry in the US estimates that its costs for Y2K fixes will be \$6.58 billion (a number which comes from 3rd quarter SEC reports). Some insurers are suggesting this is nonsense. According to an article in the Kansas City Star, Progressive Corp says in the worst case, distribution may suffer, motor vehicle reports may be unavailable and claims could be delayed. Allstate reports that its fixes came in ahead of schedule and under budget.

## MARCH 2002

**India** – Cess Likely to be imposed on Insurance Premium – The Indian Government is planning to levy a cess on insurance premium to build a "catastrophe fund" for meeting exigencies such as terror strikes and national calamities. The cess was likely to be announced in the forthcoming budget proposals for 2003-04 on February 28 in Parliament. Official sources said the fund will be established from the cess on insurance premium as no insurers can bear the huge cost otherwise. Also if one plans to insure such catastrophe, the premium will be so high that it would not be cost effective, the sources said.

**Note:** A Cess is a tax levied for a specific purpose. The revenue collected is utilized for the stated purpose. Normal tax can be utilized for anything and moreover it *has to be* shared between the Federal Government and the States (provinces).

**United States** – Larry Silverstein's property firm has settled a claim dispute with ACE and XL over the destruction of the WTC, getting a quick payment of \$365 million. Silverstein is still in dispute with another 20 insurers over the remainder of the coverage, worth about \$3.5 billion per event. The settlement with ACE and XL was based on an understanding that the events of 9-11 constituted only one event.

**United States** – Business interruption claims are to come to over 25% of the total insured losses from WTC attacks according to a report by PricewaterhouseCoopers.

**XL Winterthur International** has created a new excess casualty division in New York to write lead umbrellas up to \$25 million excess of \$1 million minimum attachment. This is for large account business and policies will be issued on admitted paper.

**ACE** has contracted to lease 100 Leadenhall Street, London as its new European headquarters. ACE Europe and ACE Global Markets subsidiaries will relocate in July, and will be joined by other UK operations of ACE

**Rolf Hüppi** will drop his role as **CEO** of **Zurich Financial Services Group** but remain as Chairman in the wake of a tumultuous year of losses and reorganization. **ISN**

# RECENTLY PUBLISHED

## Key findings from the PwC insurance industry CEO Survey

Disruption and change

Insurance CEOs' concerns over regulation, the pace of technological change, shifting customer behavior, and competition from new market entrants have continued to rise from their already high levels. In fact, no other industry group of CEOs is as 'extremely concerned' about the threats to growth in these four areas. Go [here](#) to see some of the key findings and scroll down to download the entire 20-page report or click [here](#) to go directly to the report.

## Not so recently published but *definitely* worth reading

Since my *September 2015* reading of Gillian Tett's *The Doublethink Insurance Club* I have repeatedly tried to get permission to republish it – Gillian was helpful but our requests fell on deaf ears at the *Financial Times*. The story begins in Monte Carlo (probably at the annual Rendez-Vous de Septembre) where Gillian runs into one her old business school professors, Paula Jarzabkowski. The two begin discussing Jarzabkowski's plan to conduct the first-ever "ethnographic" study of the global insurance industry to see what makes insurance executives tick. The professor *actually assembled* a team that spent three years embedded in 22 different insurance companies around the world. If this lead-in doesn't make you want to read the article, you must work in a Dunkin' Donuts shop. So here's a [link](#) (Subscription may be required).

## Hiscox Cyber Readiness Report 2017

The incidence of cyber attack is high according to the new Hiscox Cyber Readiness Report 2017. More than half of firms (57%) have experienced an attack in the past year and two in five (42%) have had to deal with two or more. Larger companies, particularly those in the US, are targeted most often. The average cost of the largest cyber security incident experienced ranges from €22,000 for very small German companies to \$102,000 for very large US companies – somewhat lower than the headline figures often seen. [Download 15-page report.](#)

**Note:** The average cost of incidents of €22,000 for small firms can be significant but the \$102,000 average for very large US firms not so much. More of a nuisance than a big financial hit and probably well within the self-insured retention.

## A Trump Administration... Insurance Leaders Comment on Impact to Industry

WRIN.tv asked several insurance trade association executives to consider the impact of the new Trump Administration on various sectors of the insurance industry. Here, WRIN.tv shares the hopes, concerns and expectations of:

- Michael Morrissey, President & Chief Executive Officer of the International Insurance Society ([IIS](#))
- David Sampson, President and CEO of the Property Casualty Insurers Association of America ([PCI](#))
- Chuck Chamness, President and CEO of the National Association of Mutual Insurance Companies ([NAMIC](#))
- Frank Nutter, President and CEO of the Reinsurance Association of America ([RAA](#))
- Sean Kevelighan, President and CEO of the Insurance Information Institute ([III](#))

Among the major policy and legislative/regulatory issues: *the* Affordable Care Act (ACA)/Obamacare, Dodd-Frank and SIFI designations, FAA regulations of drones, the Federal Insurance Office (FIO), the National Flood Insurance Program (NFIP) and tax reform. [Watch & listen](#) to what industry leaders are saying

## IAIS Releases 2016 Global Insurance Market Report (GIMAR)

The GIMAR collects and reports data reflecting the performance of primary insurers and reinsurers as well as key developments in the global insurance market from a supervisory perspective, focusing on the recent performance of the sector as well as key risks faced by it. **2016 GIMAR**

**Summary:** The report shows that, while continuing to remain well-functioning and stable, the insurance/reinsurance sector operates in an increasingly difficult macro-economic and financial environment characterized by weak global demand, low inflation rates, very low interest rates, and bursts of financial market volatility. Available [here](#).

## ISN





# AMERICAS

UNITED STATES  
EUROPEAN UNION

*The removal of collateral requirements has been particularly sought after by EU insurance bodies, which have long argued that US reinsurance collateral requirements imposed on foreign insurers were unfairly discriminatory.*

PHOTO  
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## THE UNITED STATES

### US AND EU REACH A COVERED AGREEMENT ON CROSS-BORDER INSURANCE AND REINSURANCE

*By a host of Mayer Brown attorneys contributed  
(see Contributors Page for individual details)*

On January 13, 2017, the US Department of the Treasury (Treasury), the Office of the US Trade Representative (USTR) and the European Commission announced that they had reached a [covered agreement](#) (Agreement) regarding international insurance groups doing business in the United States and the European Union (EU), concluding negotiations that officially began in November 2015. The Agreement strikes a grand bargain with respect to three areas of prudential regulation that have historically been sources of controversy: reinsurance collateral, group supervision and information exchange between regulators. According to the joint statement accompanying the release of the Agreement's final text, the Agreement will provide "enhanced regulatory certainty for insurers and reinsurers operating in both the U.S. and the EU." The actual implementation of the various aspects of the Agreement will take place over a period of up to five years, though certain provisions of the Agreement will likely be effectively operative at an earlier date. This Legal Update provides a preliminary summary of the Agreement.

The Agreement eliminates the requirement that EU reinsurers post collateral as a condition for a US ceding insurer to take statutory financial statement credit for reinsurance, provided that the reinsurer satisfies certain minimum financial tests and other requirements. It also prohibits national regulators in the EU from imposing local presence requirements on US reinsurers as a condition of doing business in EU member states. Finally, it confirms the *mutual agreement* of the United States and EU that insurers operating in each other's markets will only be subject to worldwide prudential insurance group oversight by the supervisors in their home jurisdiction, although individual regulators will still be able to regulate operations within their jurisdictions.

The removal of collateral requirements has been particularly sought after by EU insurance bodies, which have long argued that US reinsurance collateral requirements imposed on foreign insurers were unfairly discriminatory. For US insurers and reinsurers doing business in the EU, the Agreement eliminates local presence requirements as a precondition to reinsuring EU insurers, which should address some initial concerns about some EU member states' national implementations of Solvency II.

The Agreement will *enter into force* seven days after the date the United States and EU exchange written notifications certifying that they have completed their respective internal requirements and procedures. As contemplated by the Dodd-Frank Act, this completion date is April 13, 2017, with respect to the United States (90 days after the January

13, 2017, transmittal of the Agreement to Congress). The European Parliament and Council must ratify the Agreement before it can *enter into force* in the EU. Full implementation of the Agreement will take place over a period of five years, though further clarity will be needed with respect to some provisions of the Agreement and their implementation.

#### Background

Title V of the Dodd-Frank Act, which established the Federal Insurance Office (FIO) within Treasury, granted the FIO the authority to coordinate federal efforts and develop federal policy on prudential aspects of international insurance matters. The FIO was empowered to negotiate arrangements (called covered agreements) with one or more foreign authorities that achieve a level of protection for US insurance or reinsurance consumers substantially equivalent to the level of protection achieved under the US state insurance regulatory system. The FIO was also given the authority to determine whether such covered agreements will preempt state insurance laws and regulations. In its initial report on the state of the US insurance system mandated by Dodd-Frank and released in December 2013, the FIO recommended pursuing a covered agreement for reinsurance collateral requirements based on the most current version of the National Association of Insurance Commissioners' (NAIC) Credit for Reinsurance Model Law and Credit for Reinsurance Model Regulation. The USTR and FIO initially notified Congress of their intent to negotiate a covered agreement with the EU in November 2015.

State insurance laws have already somewhat eased collateral posting requirements for certain highly rated reinsurers that are domiciled in certain non-US jurisdictions. Specifically, in 2011, the NAIC amended its Credit for Reinsurance Model Law and Credit for Reinsurance Model Regulation to reduce the collateral requirements for unauthorized reinsurers that complete a special certification process. Prior to the amendments, reinsurers that were not authorized or accredited in the ceding insurer's domiciliary jurisdiction were generally required to post 100 percent collateral for the liability being assumed. The amendments (which have been adopted in a *majority* of US states, but not all states) allow unauthorized reinsurers that have been certified by the ceding insurer's domiciliary regulator to post a reduced amount of collateral (determined on a sliding scale) based on their financial strength (including minimum capitalization of \$250 million and ratings issued by two nationally recognized rating agencies) and business practices. As explained below, the collateral reduction provisions in the Agreement, which will apply only to EU-based reinsurers, are broader than the certified reinsurer provisions because they would *completely eliminate* the collateral requirement (as opposed to reducing it on a sliding scale) and because the financial strength requirements are less stringent.



### ► Covered Agreement Provisions on Reinsurance

Under the Agreement's terms, a "host jurisdiction" (e.g., any state in the United States) may not condition a local ceding insurer's entry into, or prohibit such an insurer from taking credit for liabilities ceded under, a reinsurance agreement with an assuming reinsurer domiciled in the "home jurisdiction" (e.g., a member state within the EU) or impose collateral requirements or local presence requirements with respect to the assuming reinsurer which result in less favorable treatment than reinsurers domiciled in the host jurisdiction would receive. The Agreement makes clear that ceding insurers and assuming reinsurers may negotiate more stringent collateral or other requirements on a bilateral basis as part of their reinsurance negotiations.

### GENERAL REQUIREMENTS

The provisions relating to reinsurance in the Agreement apply to insurers domiciled in the United States or the EU, respectively, that satisfy the following requirements:

- **Financial requirements.** – In the case of US insurers, maintain minimum capital and surplus of \$250 million and a minimum authorized control level risk-based capital of 300 percent (which translates to 150 percent of company action level risk-based capital). – In the case of EU insurers, maintain minimum capital and surplus of €226 million and a minimum Solvency II solvency capital ratio (SCR) of 100 percent. In contrast to the requirements for certified reinsurer status in the United States, there is no minimum credit rating requirement. The Agreement does not clarify whether permitted (as opposed to prescribed) accounting practices can be *taken into account* for purposes of the foregoing calculations.
- **Notification requirements.** Maintain good communications with the host jurisdiction's supervisory authority, including (i) giving notice of certain material events, (ii) delivering financial statements, actuarial opinions and related materials and (iii) submitting semi-annual lists of disputed and overdue (by 90 days or more) reinsurance claims from ceding insurers domiciled in the host jurisdiction.
- **Submission to jurisdiction.** Submit to the jurisdiction of, and agree to respect the judgments of, the host jurisdiction's court system, including with respect to the enforcement of arbitration awards. Additionally, an assuming reinsurer must appoint the host supervisory authority as its agent for service of process. Each reinsurance agreement must also provide that the assuming reinsurer will post collateral for 100 percent of its liabilities thereunder if it resists enforcement of a final judgment awarded to the ceding insurer.
- **Prompt claims settlement.** Demonstrate that it settles reinsurance claims promptly. Information regarding its assumed and ceded business and claims experience must be provided to the supervisory authority of the host

jurisdiction in support of the assuming reinsurer's claims practices. Any of the following will cause the assuming reinsurer to fail this test: – more than 15 percent overdue or disputed reinsurance claims; – more than 15 percent overdue (by at least 90 days) undisputed claims in excess of \$100,000 or €90,400 per ceding insurer; or – overdue (by at least 90 days) undisputed claims *in excess of* \$50 million or €45.2 million in the aggregate.

- **No solvent scheme of arrangement.** Confirm that it is not participating in any solvent scheme of arrangement involving ceding insurers in the host jurisdiction at the time of entry into a reinsurance agreement, and agree to post 100 percent collateral if the assuming reinsurer *enters into such* an arrangement. Additionally, a ceding insurer subject to resolution, receivership or liquidation proceedings may seek an order from the court administering such proceedings, requiring the assuming reinsurer to post collateral for all outstanding ceded liabilities.

Furthermore, a supervisory authority in a host jurisdiction must notify the assuming reinsurer and its supervisory authority if it *makes a determination* that the reinsurer no longer satisfies the above conditions, and must generally provide the assuming reinsurer with 30 days to submit, and 90 days to execute, a compliance plan to remedy the defect or deficiency before imposing collateral requirements or local presence requirements. A final decision to impose collateral requirements or local presence requirements *as a consequence of* a failure to remedy must be explained to the assuming reinsurer in writing.

### APPLICATION OF COLLATERAL PROVISIONS

Under the current pre-Agreement regime, if a US ceding insurer enters into a reinsurance agreement with an EU reinsurer that is not licensed or accredited in the US ceding insurer's domiciliary state, the EU reinsurer is generally required to post 100 percent collateral for the reinsured liabilities (unless the EU reinsurer is a certified reinsurer in that state, in which case a lesser amount of collateral is required). Upon the effectiveness of the Agreement and its actual applicability to the relevant US ceding insurer's domiciliary state, if the EU reinsurer meets the conditions under Article 3, paragraph 4 of the Agreement (described in "General Requirements," above), zero collateral will be required. The elimination of collateral requirements will only apply prospectively.<sup>1</sup>

Until the date on which the Agreement becomes fully effective (see "Effectiveness and Transition Period," below), the collateral elimination provisions of the Agreement will go into effect upon their adoption by individual US states. It remains to be seen whether the NAIC, which has been somewhat skeptical of the federally-led negotiation process that produced the Agreement, will take the initiative in encouraging early adoption of those provisions. However, US states that delay implementing the Agreement's provisions will run

1. Article 3, paragraph 8 of the Agreement provides that the collateral reduction provisions apply “only to reinsurance agreements entered into, amended, or renewed on or after the date on which a measure that reduces collateral pursuant to this Article takes effect, and only with respect to losses incurred and reserves reported from and after the later of (i) the date of the measure, or (ii) the effective date of such new reinsurance agreement, amendment, or renewal.”
2. “Transposition” is the term the EU uses to describe the process by which individual EU member states implement an EU directive by making changes to their local statutes and regulations.
3. In one case, the UK’s Prudential Regulatory Authority (PRA) has required US insurance groups to obtain a revocable waiver from the PRA in order to continue doing business without subjecting their entire group to Solvency II. In another, Germany’s BaFin required that a branch be separately capitalized to write insurance in Germany, and restricted a US reinsurer from writing reinsurance on anything other than a correspondent basis (which requires the reinsurer to deal directly with ceding insurers rather than placing reinsurance through brokers).

group level.

- Home supervisory authorities that receive worldwide group Own Risk and Solvency Assessments (ORSAs) or equivalent documentation must provide summaries of 5 Mayer Brown | United States and European Union Reach a Covered Agreement on Cross-Border Insurance and Reinsurance such information to supervisory authorities in host jurisdictions.
- Host jurisdictions retain the ability to exercise group supervision over and, where a group’s local financial stability is threatened or local policyholders are at risk, obtain information from and impose preventative or corrective measures with respect to, a worldwide group’s local activities in that jurisdiction, in some cases in consultation with the home supervisory authority or through the group’s supervisory college. The Agreement is not intended to limit or restrict the ability of US or EU supervisory authorities to exercise regulatory authority over groups that control banking or credit institutions in their respective geographic areas or which are large or complex enough to pose a threat to the financial stability of the United States or EU, *as the case may be*.

#### **APPLICATION OF PRUDENTIAL SUPERVISION PROVISIONS**

The prudential supervision provisions of the Agreement are operative on a provisional basis immediately and are fully operative upon the entry into force of the Agreement. The EU must ensure that member state regulators follow the practices set forth in Article 4 of the Agreement regarding prudential supervision, and the United States is charged with using best efforts and encouraging state regulators to do the same. (The federal preemption analysis required by the Agreement also applies to the prudential supervision provisions.) The Agreement also provides a termination right to each party following an accelerated mandatory consultation process *in the event that* the other party applies prudential supervision measures to an insurance or reinsurance group on an extraterritorial basis following a determination that such group could pose a threat to the financial stability of such other party.

#### **Covered Agreement Provisions Concerning Information Exchange**

Recognizing the inherently bilateral nature

the risk that the FIO will declare that the state’s applicable law is preempted by the Agreement. In this regard, the Agreement mandates the United States to conduct a federal preemption analysis of the Agreement’s provisions, to commence not later than July 2020, prioritizing the states with the highest volume of gross ceded reinsurance. Upon such a determination with respect to a state, the collateral provisions of the Agreement will go into effect in such state.

#### **APPLICATION OF LOCAL PRESENCE PROVISIONS**

As part of the transposition<sup>2</sup> of Solvency II at the member state level, some EU jurisdictions implemented measures in 2016 that non-EU insurers and reinsurers have asserted are unfairly discriminatory against non-EU insurers and reinsurers.<sup>3</sup> It is not immediately clear when these member state practices will cease *as a result of* the Agreement. However, the Agreement provides that the EU must cease imposing group capital requirements on US insurance groups immediately and must eliminate local presence requirements by January 2019. We anticipate that the EU will promulgate legislation to accomplish these objectives; this may well be done by way of a regulation, which would have a direct effect and not require transposition at the member state level.

#### **Covered Agreement Provisions Affecting Prudential Supervision GENERAL REQUIREMENTS**

The Agreement also contains provisions clarifying the prudential supervision of worldwide insurance and reinsurance groups. This will be welcome news to US-based insurance groups that have been informed by the supervisory authorities of several EU member states that they could be subject to Solvency II on a worldwide basis *as a result of* their reinsurance activities within the EU.

- The supervisory authority of the jurisdiction in which the worldwide group parent is domiciled or has its head office (the home supervisory authority) will generally have sole responsibility for worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital requirements and reporting. Supervisory authorities in other jurisdictions where the group has operations (host jurisdictions) will not have supervisory authority at the



of information exchange, annexed to the Agreement is a model memorandum of understanding (MOU) for supervisory authorities in US states and EU member states to use as a basis for their negotiations. The MOU contains best practices for the time, manner and content of information requests and responses. It also provides for confidential treatment of information provided under its framework and urges a recipient regulator to obtain the prior consent of the disclosing regulator before onward sharing to a third party that is expected to maintain the information's confidentiality on an equivalent basis. However, the MOU expressly does not address requirements that may apply to the exchange of personal data by supervisory authorities.

### **Effectiveness and Transition Period**

The Agreement will not be fully effective until January 2022, the fifth anniversary of its execution (or, if later, the date that the European Parliament and Council ratify the Agreement). Until such time, the United States and EU are only required to “encourage relevant authorities to refrain from taking any measures” inconsistent with the Agreement's conditions or provisions, notably the collateral and local presence requirements. The United States must also encourage state regulators to phase out credit-for reinsurance collateral requirements during the transitional period by reducing them 20 percent each year for EU reinsurers that would satisfy the eligibility requirements described above. Additionally, certain provisions of the Agreement may be effectively operative sooner, as discussed above. After the Agreement becomes effective, each party's obligations under the Agreement are contingent upon continued compliance by the other party; this will help ensure that the United States and EU each get the benefit of the bargain (eliminated collateral requirements for EU reinsurers operating in the United States and equitable treatment under Solvency II for US reinsurers operating in the EU).

## **NAVIGATING A CHALLENGED GLOBAL ORDER**

*By Smita Bhargava*

As described in the Winter/Spring 2016 Clements World-wide Risk Index, a more unstable and risky world is the “new normal.”

What has made operating with higher risk in all parts of the world business as usual is a breakdown of the norms that have held since the end of World War II. These norms and values have always been violated. But there has often been a price to pay for it, which deterred others from breaking them and maintained a global system that has lifted hundreds of millions out of poverty. In the past 15 or so years, the challenges to these norms have become so widespread that the global system itself is under threat.

So what are the norms of globalization under most consistent challenge?

### **Sanctity of civilian activities**

While civilians and non-military economic enterprises have always been harmed by conflict, it has been accepted that they are not deliberate targets. “Total war” was believed to be a brutal practice consigned to the past.

The rise of groups and self-proclaimed states that rely on violence against civilians has seriously challenged this value. Terrorist groups target and harm civilians all over the world. Countries like Iraq have been wracked by this kind of violence for nearly two decades.

Disturbingly, states are also now crossing this line with impunity. Attacks on hospitals, humanitarian relief operations and economic enterprises in Syria are simply the most egregious example.

When no part of society is off-limits to organized violence, there are few limits to risk as well.

### **The peaceful redrawing of borders**

The last decade has seen the violent redrawing of national borders in the Mideast and Eastern Europe. While these new borders are often not officially recognized, they are nonetheless real. Armed checkpoints and similar “border” infrastructure have a real impact on lives and livelihoods.

The possibility that citizenship and all it entails can be changed through violence introduces a new level of risk into an entire society. Countries along Russia's western border are good examples of this. Before a few years ago, it had been unimaginable for more than 60 years that they would need to prepare to defend themselves against a possible armed attack.

But countries are now assembling volunteer militias, investing in secure facilities and taking other steps rooted in a changed risk perception. This necessarily impacts both internal investment and external investors' analyses.

### **Support for liberal democracy**

Along with terrorism and other acute threats has come the rise of “illiberal democracy.” These are movements and states that believe democratically elected officials are responsible to majority interests and values. In practice, this means that institutions and practices designed to protect minority interests are ignored or even attacked. Advancement of national majority interests is believed to require a strong state. Liberal “niceties” like laws and norms that limit government power *are* to be challenged and removed.

Any challenge to rule of law is a recipe for risk. In that environment, no one knows when all rights, including property rights, will be violated. The fate of individual companies and even entire sectors can depend on personal whim.

Liberal democracy and the dispassionate application of law bring social stability and a belief that outcomes are roughly fair. This is necessary for the investment and market-based creativity and innovation that result in sus-

tained economic advancement. Remove it, and you have both increased risk and the prudent “keep your head down” conformism meant to reduce it. The end result is social and economic stagnation.

Global risk trends remain challenging. But the good news is, there are ever more creative ways to manage risks associated with war, terrorism and political violence through insurance.

The definition of war, terrorism, and political violence is broad. Property damage caused by it is not covered by typical insurance policies. Strikes, protest, riots, civil disobedience and violent acts by state and non-state actors, are all categorized as political violence and are all increasingly common. Therefore, global organizations need to add a War, Terrorism, & Political Violence Extension to their property, fleet, or business interruption policies.

Organizations need the advice of an experienced broker to maximize the value of these new insurance products. Brokers analyze claims across multiple clients to spot trends that impact operational decisions. These include types of vehicle collisions, kinds of goods stolen, etc. This information, combined with others, is used to identify risk levels and types in specific geographical locations.

This is critical data to shape tailored risk management strategies.

Further, brokers use this data to advise on operational issues, including transportation routes and physical and cybersecurity. Therefore, and perhaps even more important, preventing damages and adverse events can be achieved with the new coverages in conjunction with the expertise based on data-driven analysis offered from the broker partner.

When looking at policies to cover terrorism and other risks in “the new normal,” it’s important to go beyond the numbers and fully explore what these coverages provide. Placed against the cost, the benefits that accrue through the expertise that can proactively diminish adverse events and their impact on property and corresponding operations are often a bargain. Especially in a world in which the norms and values we have long expected to guide individuals and groups are under challenge like *never before*.

### **URGENT NEED ARISES ON ‘SILENT’ CYBER RISKS**

*By James Evans and Judy Selby, BDO Consulting*

*This article first appeared in Insurance Thought Leadership*

This is an unprecedented time for insurers. As margins associated with conventional lines of coverage continue to tighten, pressure is increasing to offer new forms of coverage to respond to the emerging cyber threats facing insureds in today’s digital economy. At the same time, insurers are compelled to make certain that those risks are effectively excluded from coverage under many other “tradi-

tional” policy forms.

Unfortunately for underwriters of both traditional and newer policy forms, emerging cyber threats can be difficult, if not impossible, to predict and factor into underwriting and policy drafting processes. But as we’ve already seen in the context of cyber incidents, today’s unknown cyber threat can become tomorrow’s front-page news and unanticipated limits payout. And if that threat is spread across multiple insureds in an insurer’s coverage portfolio, the bottom-line effect of the aggregated losses could be devastating. Making matters worse — as recently recognized by the Bank of England’s Prudential Regulation Authority (PRA) — these “silent” cyber exposures can simultaneously affect multiple lines of coverage, (including casualty, marine, aviation and transport), affecting both direct and facultative coverages.

### **Imagine this scenario:**

Company A manufactures components used in the Wi-Fi systems of commercial airliners. Mr. X, a disgruntled employee of Company A, purposely inserts a software coding vulnerability into the components, which were then sold to Company B, a leading manufacturer of commercial jetliners. Company B incorporates Company A’s components into its jetliners and then sells 30 of them to three major U.S. commercial airlines. Company A also sells the affected components to Company C, which manufactures and sells private charter jets. Company C sells 15 jets containing Company A’s vulnerable components to various private individuals and corporations.

Once the planes are in operation, Mr. X remotely exploits the vulnerability in the aircraft, causing three in-flight planes to go down in populated areas. Plane 1 crashes into a medical center in Small Town. Plane 2 destroys an electrical power station in Mega City, plunging half of the city into darkness. Plane 3, a private corporate jet, causes serious damage to a bridge that is heavily used by a commuter rail service in Sunny City, rendering it unusable and making it virtually impossible for thousands of commuters to get to work.

Widespread panic immediately ensues after the crashes. All U.S. air traffic is halted pending an investigation of the cause. There are numerous traffic accidents and looting incidents following the blackout in Mega City, and many organizations are forced to close indefinitely. Mr. X then contacts Company C and the three airlines that purchased the affected jetliners and demands \$1 billion in exchange for revealing the vulnerability.

This obviously is an unlikely scenario, but as technology continues to be used in novel ways, it is important to recognize what will be possible. This scenario was created to highlight a complex casualty catastrophe initiated from a technological weakness in an increasingly connected world.

While crashing planes are terrifying, the bigger takeaway

**Please see AMERICAS on Page 30**



# EUROPE & RUSSIA

EUROPEAN UNION



## WHAT WILL PRESIDENT TRUMP WANT TO CHANGE IN THE INSURANCE WORLD?

By George Worsley

Days before Donald Trump was inaugurated as President of the United States, the US Department of the Treasury, the Office of the US Trade Representative and the European Commission announced that they had reached an agreement regarding insurance groups doing business in the United States and the European Union, concluding negotiations which officially began in November 2015.

The agreement eliminates the requirement that EU reinsurers post collateral as a condition for a US ceding insurer to take statutory financial statement credit for reinsurance, provided that the reinsurer satisfies certain minimum financial tests and other requirements. It also prohibits national regulators in the EU from imposing local presence requirements on US reinsurers as a condition of doing business in EU member states. Finally, it confirms the *mutual agreement* of the US and EU that insurers operating in each other's markets will only be subject to worldwide prudential insurance group oversight by the supervisors in their home jurisdiction, although individual regulators will still be able to regulate operations within their jurisdictions. Full implementation of the agreement will take place over a period of up to five years, although certain provisions of the agreement are likely to be effectively operative at an earlier date.

This agreement makes it easier to administer and regulate cross-border insurance for US carriers doing business in the EU. Given the new president's aptitude for upsetting the boat and having to be reined back by others, one *has to* wonder if he will tinker with any aspects of this agreement. Analysts have already said that President Trump's views on trade and spending may not be good news for the US marine industry and its insurers. His protectionist policies relating to certain exports may invite other nations to retaliate. Brazil has introduced restrictions on international insurance and reinsurance. Other countries may follow.

Doing business across borders is different and for many people, different means difficult. Designing and implementing insurance and reinsurance protection in a multitude of jurisdictions, with different legislative environments, cultures, customs, languages, compulsory coverages, policy wordings and taxes, etc, requires special expertise and is fun. When looking at and understanding risk, the experts will consider a wide range of solutions. Understanding risk and mitigating it is risk management; understanding risk and setting terms and conditions on the transfer of that risk is underwriting – and that's it. Ironing out the ways through a labyrinth of regulatory obstacle courses is not what insureds, brokers and carriers want to spend time negotiating. *All of* the insurance-related directives within the EU have been designed to reduce, nay, avoid the hassle in conducting insurance across borders within the EU and agreements like the US/EU agreement are already in place and that has made life a whole lot easier.

The question some people are asking is: does this new US/EU agreement make it easier for EU insurers and reinsurers to compete with their US counterparts within the United States? Because if so, how long will it take before the Donald gets his hands on it? **ISN**

PHOTO  
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# ASIA & OCEANIA



PHOTO  
MELBOURNE, AUSTRALIA  
September 21, 2016  
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## AUSTRALIA

### Pendulum outlines insurance industry status

*Now in its 10th year of publication, Pendulum is a joint report prepared by Finity Consulting and Deutsche Bank, exploring the **general insurance industry's performance in Australia**, plus emerging trends and the industry outlook for the future*

The latest issue of the report shows that 2014-15 and 2015-16 produced relatively poor insurer results and the report authors do not see 2016-17 as likely to produce anything much different. They say the current environment remains challenging with headwinds coming from weak top-line growth, an economic environment characterized by low inflation and low economic growth, and ever lower investment returns. In commercial lines, the market seems to be talking about a “flattening” of rate reductions but that clearly falls short of a strong signal of decent rate increases, the report said. On the investment side, the outlook has been weak for some time and yields are now expected to be “lower for longer” with Brexit concerns adding further to the downsides. Against that background, investment returns are contributing less to insurance margins and return on equity (ROE) than a few years ago.

Finity and Deutsche Bank say possible upsides for insurers include softer reinsurance prices and savings from expense reduction programs. However, those will not be enough to fully counter the headwinds. “We believe the industry is now in a period of subdued profitability (at least compared to the highs of 2012-13 and 2013-14). Expressed in terms of ROE, we anticipate ROEs in the 10% to 12% range for 2016-17, quite a few points below the average 15% ROE achieved over the last decade,” the authors said. To read the full Pendulum report, click > <http://www.finity.com.au/publication/pendulum-2016-outlook>

From an insured's perspective, the current environment remains competitive for both premiums and terms & conditions of cover. As always, underwriters show a preference for well-managed risks.

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# THE BACK PAGE

Solutions to the News Quizzical (page 5)

1.b; 2.c; 3.c

## Did you know?

From the archives of the Insurance Research Letter (March 1999) – According to Anita Bourke, vp Strategic Planning, Willis Corroon, “only 3.6 million people banked online and only 100,000 people were served online by the insurance industry.”

### There are 6 languages available to read content on US Treasury website

On the US Department of The Treasury's [website](#) you can read content in six languages. Tagalog, being one, is an Austronesian language with about 57 million speakers in the Philippines, particularly in Manila, central and southern parts of Luzon, *and also* on the islands of Lubang, Marinduque, and the northern and eastern parts of Mindoro. Click [here](#) to listen to a sample.

## Quotes

*“The insurance industry, in my personal opinion, is like the ‘Amish’ of the financial services industry.”*

~ **William C. Hartnett**, worldwide group manager, financial services, Microsoft, speaking on how eCommerce can bring extra value to customers during a CPCU live satellite broadcast on February 2, 1999 as reported by the Insurance Research Letter

*“Books are no more threatened by Kindle than stairs by elevators.”*

~ **Stephen Fry** (b. August 24, 1957, London, England), British Actor, writer and director

*“Until the lion learns to write, every story will glorify the hunter.”*

~ African Proverb

*“Government’s view of the economy could be summed up in a few short phrases: If it moves, tax it. If it keeps moving, regulate it. And if it stops moving, subsidize it.”*

~ Ronald Reagan

## Must see websites

### Who wants to be second?

This is *really entertaining* look at why countries around the world want to be second to the US in greatness.

<http://www.everysecondcounts.eu/>

**YouGov** – <https://today.yougov.com>

What the world thinks. As the site says “YouGov is a global market research and data company built on a simple idea: The more people participate in the decisions made by the institutions that serve them, the better those decisions will be.” YouGov is a community of 4 million people around the world who share their views on life. Each country or region (see image below) has its own website.

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## Cartoon



*I hate to admit it, but a man with a big carbon footprint makes me hot.*

# WORDS AND DEFINITIONS TO HELP INSURANCE PROFESSIONALS\*



**Keith  
Purvis**

## EXPLOSION

By Keith Purvis\*

Explosion can be defined as sudden and rapid combustion, causing violent expansion of the air, gases or vapors accompanied by a report (meaning a loud noise in this context). With respect to property insurance the substances that matter *are* those that cause the explosion. *Thus* explosions due to explosive substances and dust are insurable, but not those caused by the tearing of rotating solid bodies due to centrifugal force or the bursting of containers and pipes due to the high internal pressure of fluids or gases. Property insurance does not, therefore, cover explosions in boilers and pressure plants, which are insured as a separate class of risk in the engineering department.

Insurance is needed not only to cover the property directly affected by the explosion, but also other property owned by the policyholder which may have suffered consequential damage. Business interruption pays for loss of earnings and, if available, contingent business interruption for the financial consequences of explosions at the plants of suppliers or customers. Public liability insurance covers bodily injury and property damage to third parties due to explosion, in Germany trade associations (*Berufsgenossenschaften*) providing indemnification if those injured are the policyholder's employees.

Companies involved in activities that use explosive materials, such as manufacturers of ammunition and fireworks, are obviously dangerous risks, as well as those using natural gas and petroleum in the production of chemicals. How-

ever, potentially dangerous are environments in which dry powder or dust is finely dispersed in a confined space if this is exposed to heat, and oxygen and fuel are also available. This sort of situation can occur in many types of plant, such as sawmills, grain silos and in facilities that do any type of high-speed grinding and blending of fine powders. Moreover, in attempting to extinguish a blaze (*Brand*) firemen can unwittingly cause an explosion by dispersing dust into the air that had settled on the ground and other surfaces.

In industrial settings underwriters must understand the degree of risk in the industrial processes involved and policyholders should comply with legal regulations and follow the advice of various professional organizations. The *Verein Deutscher Ingenieure (VDI)*, for example, lays down risk management standards for the prevention of explosion in environments that are exposed to powder and dust.

For private customers, explosion *as a result of* fire is included in the standard insurance coverage for buildings and contents, so-called household insurance.

\* Keith Purvis for *Versicherungswirtschaft* Nr.12. November 2016  
([PIA](#) Member publication)

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**EDITOR'S LETTER, continued from Page 5****Urgent Need Arises on 'Silent' Cyber Risks**

Unfortunately for underwriters of both traditional and newer policy forms, emerging cyber threats can be difficult, if not impossible, to predict and factor into underwriting and policy drafting processes. Read why my postulation on how to cover cyber risks in the Editor's Letter might be challenged on [page 23](#)

**What will President Trump want to change in the insurance world?**

Read what our correspondent in England says about President Trump's plans for the insurance world on [page 25](#)

**ISN****GLOBAL BRIEFS, continued from Page 15****United States – Tennessee adds record number of captives**

Tennessee added 104 captive entities in 2016, a record number as the state builds its captive industry following a 2011 legislative change, the Tennessee Department of Commerce & Insurance reported. The new captives, called risk-bearing entities by the department, composed of 30 pure captives, five protected cell companies, one association captive, one risk retention group and 67 new protected cells, the department said in a press release. Nine of the newly added captives are re-domestications to the state from other domestic and international domiciles, according to the department. The 2016 additions bring the state's total to 159 captives and 379 protected cells formed for a total of 538 risk-bearing entities – growth that was attributed to a 2011 revision designed to make the state's captive insurance laws more effective, balanced and flexible, according to the department. *Business Insurance*, Feb 6, 2017

**United States – Millennial Survey Reveals How the Most Underinsured Generation Spends on Insurance**

At more than 75 million people in the US, the millennial generation is now the largest living generation. They are also the most underinsured. To help better understand why the millennial generation remains chronically underinsured, Vertafore went directly to the consumers shaping the future of insurance – surveying nearly 450 US millennials ages 18-35 on their insurance purchasing and personal finance habits. [Infographic](#) (click in image once loaded for larger view). **ISN**

**AMERICAS, continued from Page 23**

is that this was not a possible scenario prior to recent technological developments. It isn't difficult to see how the multiple insurance coverages triggered from the above scenario could result in insured losses well *in excess of* \$20 billion. Individual company losses could be disastrous, given the previously uncorrelated nature of individual lines of businesses that would be affected. While technology forges new connections among businesses and individuals, the connections have ushered in the new risk of technology-initiated catastrophe scenarios, recently labeled as a "Cyber Andrew" scenario, referring to Hurricane Andrew, which resulted in losses few insurers previously believed possible.

The continued expansion of loss causes, courtesy of new technology, will have implications for both legacy insurance and new cyber insurance contracts. This means that insurers must assimilate expanding possibilities into risk management processes including Probable Maximum Loss ("PML"), risk aggregations and risk appetites. At the core of the silent cyber hurdle is: Do current risk management systems capture all possible risks today, and will they capture what can happen tomorrow, before a "Cyber Andrew" hits?

This challenge, if the PRA is to be believed, is currently not being met. As the conversations continue to escalate to the C-suite, risk managers need access to a team with specialized skill sets to better understand and calculate the impact of new technology into their enterprise risk management plans. At the same time, this added focus on technology will continue to expand reporting requirements. Providing detailed yet clear reporting to the board that highlights the full impact of current technologies on the comprehensive insurance portfolio will be a minimum standard.

As technology continues to advance, insurers' risk management tools and resources must evolve. Each organization will face its own distinct hurdles based on individual characteristics of its insurance portfolio, and its solution should be just as individualized. There will not be one magic bullet that ends cyber risk. The keys to meeting this challenge will be understanding new and emerging risks and assembling a team of professionals with the prerequisite skills to address the issues.

**Q & A with the authors**

**IRL** – What does an 'exclusion' wording being used for 'traditional' policies look like?

**BDO** – A traditional policy likely would contain language like this, "This insurance does not apply to damages arising out of: the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data." Any access to or disclosure of any person or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial



information, credit card information, health information or any other type of nonpublic information.

**IRL** – Why is a ‘traditional’ policy’s *original intent* not a valid defense?

**BDO** – Most courts generally will not look beyond the insurance policy itself when deciding if a claim falls within the coverage. They usually won’t “torture” the language in the policy, but any ambiguity usually is construed against the insurer. It can be difficult to introduce extraneous evidence as to intent of either party, or as to other issues, when the contract is being interpreted.

**IRL:** Agreed with ‘off-the-shelf’ policies; *however* when it comes to ‘manuscripted’ policies I found that negotiating policy wordings with lead underwriters at Lloyd’s is an art form that pays dividends. Drawing them into debate on intent is a successful tactic when it comes to settling a loss.

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We have enhanced our online presence with [The Insurance Research Letter Live!](#) YouTube Channel. Subscribe to our channel (under the banner on the right side) – this way you will be alerted when a new video presentation is published.

**Testimonial:** “Great videos – very interesting and informative.” ~ **Robert Hartwig**, Clinical Associate Professor & Co-Director, Center for Risk and Uncertainty Management at University of South Carolina & Former President and Economist, The Insurance Information Institute ([I.I.I.](#))

# INTERNATIONAL EMPLOYEE BENEFITS RESOURCES

## Employee Benefits Reference Manual – Swiss Life

Download Swiss Life’s Employee Benefits Reference Manual (EBRM), which provides comprehensive information about social security, private employee benefits *plans* and taxation from 47 countries around the globe

- [Download EBRM on your iPad](#) (not available in the US iTunes store)
- [View and download country profiles](#)

## Listing of Social Security Programs Around the World – U.S. Social Security Administration

[Social Security Programs throughout the world](#)

## National Labor Law Profiles – International Labor Organization (ILO)

The National Labour Law Profiles that you will find on this site intend to provide a rapid overview of the labour law in a *number of* ILO member States. Their purpose is to facilitate a general understanding of how the labour law works in each country, and to provide the reader with easy access to information on a *number of* topics. However, the profiles do not intend to give a comprehensive description of the labour law in any country. Where appropriate, a bibliography and a list of links is given, directing the reader towards more in-depth information.

Note: This project is not updated anymore and kept for historical analysis of comparative labour law only. Nonetheless it has value. [Go to website.](#)

## Social Security in other Countries – U.S. Social Security Administration

An ever-increasing number of social security agencies and organizations around the world are publicizing their programs on the World Wide Web. We have listed some of these Web sites below and will be adding to the list as we learn of new sites. [Go to website.](#) **ISN**

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*~ Patrick G. Ryan, Chairman and CEO, Ryan Specialty Group (RSG)*

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